

PRE-CONFERENCE COMMITTEE ANALYSIS OF PROPOSED  
AMENDMENTS TO SB 1088 (LOCKYER)

September 8, 1997

1. Purpose of Amendments in Conference:

These amendments create a resource center for attorneys doing capital habeas corpus petitions, increase the funding for the Office of the State Public Defender and increase the rate of pay for counsel who do capital appeals and habeas corpus petitions.

2. History:

Under the existing system, direct appeals in death penalty cases and postconviction proceedings (habeas corpus petitions) in death penalty cases are handled by either the State Public Defender or appointed private counsel. Private counsel are paid by an hourly rate or on a fixed-fee schedule set up by the Court.

As of January 28, 1997, 151 of the 469 persons on death row lacked counsel. The Office of the State Public Defender is currently handling twenty-seven capital appeals and twenty-eight state capital habeas corpus petitions and one federal habeas corpus petition, the rest are being handled by private counsel.<sup>1</sup>

SB 1533 (Calderon), 1996, which failed in the Senate Committee on Public Safety and SB 991 (Calderon) which is currently on suspense in Senate Appropriations, would create a new Office of Post Conviction Counsel intended to handle habeas corpus petitions in the future in order to opt into the federal expedited system, but neither is intended to take care of the backlog of cases. AB 2008 (K. Murray), 1996—which increased the compensation of private counsel, increased the funding to the Office of the State Public Defender and limited the State Public Defender to capital appeals—was vetoed by the Governor because "...enactment of [AB 2008] would divest the State Public Defender of authority to file habeas writs without the establishment of an Office of Post Conviction Counsel, which would leave a dangerous void in the process with no assurance that it would be filled."

3. Analysis of Proposed Conference Amendments (RN9722538):

a. Establishment of a Resource Center.

These amendments create in the Judicial Branch the "California Habeas Resource Center." (Amend. 2, sec. 68651)

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<sup>1</sup> Numbers from Kelso, J. Clark, *Representation in Capital Appeals (AB 1741) and Post-Conviction Proceedings (SB 911)* (Institute for Legislative Practice, Inst. Publ. No. 3.102, March 4, 1997) p. 1.

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The Center is to be managed by an executive director who is to run the day-to-day operations. The executive director shall be chosen by a three-member board of directors. The executive director shall have the same qualifications as the State Public Defender. The directors shall be appointed by the Governor, the Chairperson of Senate Rules and the Speaker of the Assembly. The board members shall serve 4 year terms and shall not be compensated for their service. No attorney who is employed as a judge, prosecutor, or in law enforcement capacity shall be eligible to serve on the board. (Amendment 2, sec. 68652)

SHOULD THE CENTER BE CREATED IN THE JUDICIAL BRANCH? DOES ANY CONFLICT ARISE IF IT IS CREATED IN THE JUDICIAL BRANCH?

IF THE CENTER IS CREATED IN THE JUDICIAL BRANCH, SHOULD THE BOARD MEMBERS BE POLITICALLY APPOINTED OR SHOULD THEY BE APPOINTED BY SOME OTHER MEANS SUCH AS BY EACH OF THE APPELLATE PROJECTS?

SHOULD THE EXECUTIVE DIRECTOR BE APPOINTED FOR A TERM OR BE APPOINTED AT THE WILL OF THE BOARD? DOES THE ANSWER AS TO WHETHER THE DIRECTOR SHALL SERVE FOR A SET TERM CHANGE DEPENDING ON WHETHER THE BOARD IS POLITICALLY APPOINTED OR NOT?

DO THE AMENDMENTS REQUIRE ALL BOARD MEMBERS TO BE ATTORNEYS? SHOULD THE AMENDMENTS REQUIRE ALL BOARD MEMBERS TO BE ATTORNEYS?

b. Duties of a center.

According to the amendments the Resource Center would:

- recruit members of the private bar to accept death penalty habeas case appointments;
- establish and periodically update a roster of attorneys qualified as counsel in post conviction proceedings in capital cases;
- establish and periodically update a roster of experienced investigators and experts who are qualified to assist counsel in postconviction proceedings in capital cases;
- have the authority to employ investigators and experts as staff to provide services to appointed counsel upon request of counsel where such services are reasonably necessary provided that the provision of such services shall be pursuant to contract between appointed counsel and the Center;
- provide legal or other advice or, to the extent not otherwise available, any other assistance to appointed counsel in postconviction proceedings as is necessary;

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- develop a brief bank of pleadings and related materials on significant, recurring issues which arise in postconviction proceedings in capital cases and shall make these briefs available to appointed counsel;
- evaluate cases and recommend assignment by the Court of appropriate attorneys;
- provide assistance and case progress monitoring as needed;
- review case billings and recommend compensation of private bar members to the court.

(Amed. 2, sec. 68651)

SHOULD THE "RECRUIT ATTORNEYS" LANGUAGE BE DELETED TO MAKE IT CLEAR THAT THE APPOINTMENT OF ATTORNEYS WILL REMAIN WITH THE SUPREME COURT?

SHOULD THE CENTER BE RESPONSIBLE FOR REVIEWING THE ENTIRE BILL FOR A HABEAS PETITION OR JUST THE INVESTIGATION RELATING TO EXPENSES?

SHOULD IT BE CLARIFIED THAT THE CENTER IS NOT INTENDED TO BE CO-COUNSEL WITH THE APPOINTED COUNSEL BUT MERELY A RESOURCE CENTER?

c. Qualifications of attorneys.

The amendments provide that the Judicial Council shall adopt a rule of court establishing binding or mandatory competency standards for appointment of counsel in death penalty cases. (Amend. 2, Sec. 68653) This is required by the federal legislation for expediting habeas petitions.

THE AMENDMENT SHOULD READ THAT THE JUDICIAL COUNCIL IN CONSULTATION WITH THE SUPREME COURT SHALL ADOPT THE RULES.

d. Increased compensation.

The amendments increase the compensation for private counsel doing capital appellate or habeas petitions to \$125. (Amendment 2, section 68654) This provision was contained in this bill as it passed out of both the Senate and Assembly Committees on Public Safety.

This bill also provides that the limit on investigative costs without an order to show cause should be raised from \$12,000 to \$25,000. (Amendment 2, section 68654)

SHOULD THE AMENDMENTS INDICATE WHEN THE \$125 COMPENSATION WILL BEGIN? WILL IT INCLUDE PAYMENT ON PREVIOUSLY ASSIGNED

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CASES FOR WORK DONE AFTER THE SPECIFIED DATE OR ONLY FOR CASES ASSIGNED AFTER THAT DATE?

e. Increase in personnel for Office of the State Public Defender.

This bill provides that the Office of the State Public Defender may hire 11 more staff attorneys for the purpose of accepting appointments of counsel to the backlog of unrepresented death row inmates. (Amendment 2, Sec. 68655)

SHOULD THE AMENDMENTS ALSO PROVIDE FOR THE HIRING OF ADEQUATE SUPPORT STAFF TO ASSIST THE 11 NEW COUNSEL POSITIONS?

f. Appropriation.

As currently drafted, these amendments appropriate two million dollars for the Center, and one million two hundred fifty thousand dollars to the office of the State Public Defender but do not indicate the appropriation to the Administrative Office of the Courts. (Amend. 2, Sec. 2)

INSTEAD OF APPROPRIATING FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS, THE FUNDS SHOULD BE APPROPRIATED TO THE SUPREME COURT.

WHAT WILL THE APPROPRIATION TO THE COURTS BE IN ORDER TO FUND THE INCREASED FEES FOR COUNSEL?

Consultant: M. Kennedy/Senate Committee on Public Safety

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